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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,263	07/03/2003	Wade E. Davenport	57231.D1/4632.5	4880
408	7590	03/26/2004	EXAMINER	
LUEDEKA, NEELY & GRAHAM, P.C. P O BOX 1871 KNOXVILLE, TN 37901			CRANE, DANIEL C	
			ART UNIT	PAPER NUMBER
			3725	

DATE MAILED: 03/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.	10/613,263	Applicant(s)	DAVENPORT, WADE E.
Examiner	Daniel C Crane	Art Unit	3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 9-17 is/are pending in the application.
  - 4a) Of the above claim(s) 9-14 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 15-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 9-17 are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/27/03.

- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

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## **RESTRICTION**

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I.      Claims 9-14**, drawn to an apparatus for roll bending sheet material, classified in class 72, subclass 170.
- II.     Claims 15-17**, drawn to a process for manufacturing a pontoon, classified in class 72, subclass 372.

The inventions are distinct, each from the other because:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the apparatus can be used for manufacturing other cylindrical related products. For example, the apparatus can be used to roll pipe or tubing.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

## **ELECTION**

During a telephone conversation with Mr. Fox on March 24, 2004 a provisional election was made with traverse to prosecute the invention of Group II, claims 15-17, drawn to the method. Affirmation of this election must be made by applicant in replying to this Office action.

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Claims 9-14 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### **BASIS FOR REJECTIONS**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

### **REJECTION OF CLAIMS OVER PRIOR ART**

Claims 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (4,249,406). As taught by Anderson, aluminum sheet (column 3, line 46) can be rolled by a three rollers 11, 12, 13 axially arranged with the machine being configured to making pipe of lengths as high as 40 to 60 feet (column 4, lines 1-8). As to the specific use of the product (pontoon) in a method claim, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Claims 15-17 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (2,710,609) in view of Biedenweg (6,302,042) and anyone of Isenberg (2,432,666) or Williamson (4,706,488). Jones teaches the process of manufacturing a pontoon by fabricating the pontoon from a tubular member. Jones does not indicate the manner of producing the tubular member. It is well known in the art to produce large length tubular member by a rolling procedure where the roll extends the full length of the tube as evidenced by either one of Biedenweg or Isenberg. Accordingly, it would have been obvious to the skilled artisan at the time of the invention to have modified Jones' process by initially forming the pontoon tube from a large length as taught by Biedenweg or Isenberg so as to

#### **PRIOR ART CITED BY EXAMINER**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

#### **RESPONSE BY APPLICANT(S)**

Applicant(s) response to be fully responsive and to provide for a clear record must specifically point out how the language of the claims patentably distinguishes them from the references, both those references applied in the objections and rejections and those references cited in view of the state of the art in accordance with 37 CFR 1.111 (a), (b) and (c).

## INQUIRIES

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner D. Crane whose telephone number is **(703) 308-1870**. The examiner's office hours are 6:30AM-5:00PM, Tuesday through Friday. The examiner's supervisor, Mr. Allen Ostrager, can be reached at **(703) 308-3136**.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is **(703) 308-1148**.

Documents related to the instant application may be submitted directly to Group 3700 by facsimile transmission at all times. Applicant(s) is(are) reminded to clearly mark any transmission as "DRAFT" if it is not to be considered as an official response. The Group 3725 Facsimile Center number is **(703) 872-9306**.

DCCrane  
March 24, 2004



**Daniel C. Crane**  
Primary Patent Examiner  
Group Art Unit 3725